

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR.
COUNTY, et al.,

Plaintiffs,

vs.

SCOTT TURNER in his official capacity
as Secretary of the U.S. Department of
Housing and Urban Development, et al.,

Defendants.

No. 2:25-cv-00814-BJR

TEMPORARY RESTRAINING
ORDER

[PROPOSED]

This matter came before the Court on the moving Plaintiffs' combined Second Motion for Temporary Restraining Order and Preliminary Injunction ("Motion").¹ Having considered the briefs and declarations submitted in support of and in opposition to the Motion, the briefs and declarations submitted in support of and in opposition to the original Plaintiffs' Motion for Temporary Restraining Order and Motion for Preliminary Injunction, and the other pleadings and papers filed in this action, the Court makes the following Findings of Fact and Conclusions of Law with respect to the portion of the Motion seeking a TRO.

¹ The moving Plaintiffs as to the portion of the Motion seeking a temporary restraining order (TRO) are City of Columbus ("Columbus"), Intercity Transit, Martin Luther King, Jr. County ("King County"), City of Minneapolis ("Minneapolis"), City of New York ("NYC"), Port of Seattle, and City of Tucson ("Tucson") (collectively, "DOT Plaintiffs"), as to the DOT Grant Conditions, and City of Cambridge ("Cambridge") and City of Pasadena ("Pasadena") (collectively, "HUD Plaintiffs") as to the CoC Grant Conditions, as further defined below.

1 **I. FINDINGS OF FACT**

2 **A. Continuum of Care Grant Conditions**

3 1. HUD Plaintiffs rely on federal funding from the Continuum of Care (CoC) program
4 established by Congress to provide critical services to individuals and families experiencing
5 homelessness, including rapid rehousing, permanent supportive housing, and other services.

6 2. In July 2024, Defendant U.S. Department of Housing and Urban Development
7 (HUD) posted a biennial Notice of Funding Opportunity (NOFO), inviting applications from local
8 coalitions, known as “Continuums,” for CoC funding. None of the conditions challenged here were
9 included in the NOFO. After reviewing applications, HUD conditionally awarded HUD Plaintiffs
10 and their Continuums a total of nearly \$13 million in CoC grants in Fiscal Year (FY) 2024. Relying
11 on these awards, Cambridge has already committed substantial sums from its own funds to two
12 nonprofit subrecipients to avoid disruptions in housing or other homelessness assistance services.
13 Similarly, Pasadena has begun the contracting process with at least one subrecipient that has
14 already begun incurring expenses and expects reimbursement from Pasadena.

15 3. In March 2025, Pasadena and other Plaintiffs begin receiving CoC grant
16 agreements (“CoC Agreements”) from HUD containing grant conditions (“CoC Grant
17 Conditions”) that were not included in the NOFO or authorized by any statute or regulation. On
18 May 14, 2025, Cambridge was informed by HUD staff that HUD anticipated sending the first FY
19 2024 CoC Agreements to Cambridge the week of May 19, 2025. Cambridge expects these
20 agreements will include the same CoC Grant Conditions that HUD has attached to all CoC
21 Agreements presented to other Plaintiffs, including the nearby City of Boston.

22 a. The CoC Agreements state that “[t]his Agreement, the Recipient’s use of funds
23 provided under this Agreement . . . , and the Recipient’s operation of projects
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1 assisted with Grant Funds” are “governed by” not only certain specified
2 statutes, rules, and grant-related documents, but also by “all current Executive
3 Orders”

4
5 b. The CoC Agreements require the recipient to certify “it does not operate any
6 programs that violate any applicable Federal anti-discrimination laws,
7 including Title VI of the Civil Rights Act of 1964.” The CoC Agreements also
8 require the recipient to agree that “its compliance in all respects with all
9 applicable Federal anti-discrimination laws is material to the U.S.
10 Government’s payment decisions” for purposes of the False Claims Act (FCA),
11 31 U.S.C. §§ 3729 et seq. President Donald J. Trump, HUD, and other agencies
12 have confirmed their agenda is to prohibit policies or programs promoting
13 inclusion for people of all races, ethnicities, national origins, sexes, gender
14 identities, or sexual orientations through the guise of enforcing federal
15 nondiscrimination law.
16

17 c. The CoC Agreements provide that “[n]o state or unit of general local
18 government that receives funding under this grant may use that funding in a
19 manner that by design or effect facilitates the subsidization or promotion of
20 illegal immigration or abets policies that seek to shield illegal aliens from
21 deportation.”
22

23 d. The CoC Agreements further require the recipient to comply with “applicable
24 requirements that HUD, the Attorney General, or the U.S. Center for
25 Immigration Services may establish from time to time to comply with
26 PRWORA, Executive Order 14218, other Executive Orders or immigration
27

laws.”

e. The CoC Agreements also provide:

Subject to the exceptions provided by [the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (PRWORA)], the recipient must use [the Systematic Alien Verification for Entitlements (SAVE) system], or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.

f. The CoC Agreements require the recipient to agree it “shall not use grant funds to promote ‘gender ideology,’ as defined in [Executive Order] 14168.”

g. The CoC Agreements prohibit the recipient from using grant funds “to fund or promote elective abortions, as required by [Executive Order] 14182, Enforcing the Hyde Amendment.”

4. On May 7, 2025, this Court entered a TRO enjoining Defendants HUD and Scott Turner from, among other things, imposing or enforcing the CoC Grant Conditions, rescinding or canceling the CoC Agreements or withholding funds based on such conditions, or requiring any “certification” or representation related to the those conditions with respect to the Plaintiffs who joined the initial TRO motion.² On May 21, 2025, this Court extended the TRO. The TRO served, in part, to prevent imminent and irreparable harms that those Plaintiffs faced from having to choose between accepting conditions that are likely unlawful or losing hundreds of millions of dollars in federal grant funding, including funding they had already budgeted and were committed to spending and that was necessary to serve vulnerable residents.

5. On May 21, 2025, Plaintiffs filed an Amended Complaint, adding, among other

² Plaintiffs King County, Pierce County, Snohomish County, San Francisco, Santa Clara, Boston, and NYC joined the first Motion for TRO as to the CoC Grant Conditions. *See* Dkt. # 5.

1 things, additional Plaintiffs, including HUD Plaintiffs. HUD Plaintiffs assert the same claims and
2 allege similar harms with respect to the CoC Grant Conditions.

3 6. For similar reasons to those stated in this Court's May 7 TRO (Dkt. # 52), HUD
4 Plaintiffs face immediate and irreparable harms that require emergency relief.

5
6 a. In particular, Cambridge has an immediate need to draw down FY 2024 CoC
7 funds because two of its nonprofit subrecipients who operate critical housing
8 services will run out of funds on May 31, 2025, when certain FY 2023 CoC
9 grants expire. While Cambridge has temporarily allotted \$93,200 of its own
10 funds for June 2025 expenses, continued funding by Cambridge is not feasible.
11 Accordingly, Cambridge requires immediate certainty as to whether its
12 continued use of CoC funds, which account for over 40% of its homelessness
13 assistance budget, will be subject to grant conditions that are likely unlawful.

14
15 b. Pasadena faced an apparent May 12, 2025 deadline and returned the CoC
16 Agreement with an amendment indicating that it does not consent to the CoC
17 Grant Conditions, but it has not been able to draw down funds. To avoid any
18 interruption in housing or other homelessness services, Pasadena has begun the
19 contracting process with at least one service provider; and that provider has
20 begun incurring costs and expects Pasadena to reimburse it.

21
22 7. In sum, HUD Plaintiffs have begun budgeting, planning, and contracting with
23 service providers, some of whom are already incurring costs and expect reimbursement;
24 households reliant on private rentals are at risk of eviction if there is even a short-term interruption
25 of rent payments covered by CoC funds; and the interruption of funds could threaten the operation
26 of supportive housing in HUD Plaintiffs' jurisdictions. Ultimately, any delay or loss of funding
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1 would result in disruption of services and cause irreparable damage to individuals' lives. Without
 2 CoC funding, over 200 individuals in Cambridge, and over 400 in Pasadena, would potentially
 3 lose their housing and access to critical supportive services. The loss of supportive housing
 4 capacity would further strain HUD Plaintiffs' emergency shelter systems, result in longer durations
 5 of homelessness, and reduce exits to stable housing.
 6

7 **B. The DOT Grant Conditions**

8 8. The DOT Plaintiffs have billions of dollars in appropriated funds through grant
 9 programs administered by the U.S. Department of Transportation (DOT) and/or its operating
 10 administrations the Federal Highway Administration (FHWA), Federal Aviation Administration
 11 (FAA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA)
 12 (collectively, the "DOT OAs," and together with Defendants DOT, Sean Duffy, Tariq Bokhari,
 13 Gloria M. Shepherd, Chris Rocheleau, and Drew Feeley, the "DOT Defendants").
 14

15 9. On April 24, 2025, DOT Secretary Sean Duffy issued a letter to "all recipients" of
 16 DOT grant funding announcing, among other things, a DOT "policy" to impose certain conditions
 17 on all DOT funding, including grants administered by DOT and the DOT OAs. In particular,
 18 Secretary Duffy's letter states that grant recipients' "legal obligations require cooperation
 19 generally with Federal authorities in the enforcement of Federal law, including cooperating with
 20 and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and
 21 components of the Department of Homeland Security in the enforcement of Federal immigration
 22 law." It also states that DOT interprets federal anti-discrimination law to presumptively prohibit
 23 "any policy, program, or activity that is premised on a prohibited classification, including
 24 discriminatory policies or practices designed to achieve so-called 'diversity, equity, and inclusion'
 25 . . . goals." Finally, the letter states that "DOT recipients are prohibited from engaging in
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discriminatory actions in their own policies, programs, and activities.”

10. Pursuant to the policy set forth in Secretary Duffy’s letter, the DOT Defendants began attaching new conditions related to immigration enforcement, executive orders, and diversity, equity, and inclusion (DEI) to DOT-funded grants.

11. For instance, NYC, Tucson, and other Plaintiffs were previously awarded FTA funds pursuant to programs codified in title 49, chapter 53 of the U.S. Code. These funds were awarded without any of the conditions challenged here.

12. On April 25, 2025, FTA issued a revised Master Agreement, which applies to FTA grants awarded to the DOT Plaintiffs. The new Master Agreement contains the following new conditions (“FTA Grant Conditions”):

a. The FTA Master Agreement requires the recipient to “agree[] to comply with all applicable federal requirements and follow applicable federal guidance.”

The Master Agreement defines “Federal Requirement” to include “[a]n applicable federal law, regulation, or executive order.”

b. The FTA Master Agreement provides:

(1) Pursuant to section (3)(b)(iv)(A) [of Executive Order 14173], the Recipient agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the government’s payment decisions for purposes of [the FCA].

(2) Pursuant to section (3)(b)(iv)(B) [of Executive Order 14173], by entering into this Agreement, the Recipient certifies that it does not operate any programs promoting [DEI] initiatives that violate any applicable Federal anti-discrimination laws.

While FTA grants have long required compliance with nondiscrimination laws, DOT has confirmed its intent to enforce a sweeping interpretation of these conditions inconsistent with statutory text and current court interpretations of

1 the Federal antidiscrimination laws.

2 c. The FTA Master Agreement also provides:

3 The Recipient . . . will cooperate with Federal officials in the
4 enforcement of Federal law, including cooperating with and not
5 impeding U.S. Immigration and Customs Enforcement (ICE) and
6 other Federal offices and components of the Department of
Homeland Security in the enforcement of Federal immigration law.

7 13. This Court's initial TRO enjoined Defendants DOT, FTA, Sean Duffy, and Mathew
8 Welbes from, among other things, imposing or enforcing the FTA Grant Conditions, rescinding or
9 canceling FTA funds or withholding funds based on such conditions, or requiring any
10 "certification" or representation related to the those conditions as to Plaintiff King County—the
11 sole Plaintiff to initially seek preliminary relief from the FTA Grant Conditions. This aspect of the
12 TRO served, in part, to prevent immediate and irreparable harms that King County faced from
13 having to choose between accepting likely unlawful conditions or losing hundreds of millions in
14 FTA funding.
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16 14. In recent weeks, DOT and the remaining DOT OAs have attached substantially
17 similar conditions to numerous other DOT grants. These include programs administered by
18 FHWA, such as the Safe Streets and Roads for All (SS4A) program, the Federal Highway-Aid
19 Program, the Bridge Investment Program, the Culvert Aquatic Organism Passage Program, and
20 the Advanced Transportation Technology and Innovation (ATTAIN) program; programs
21 administered by FAA, such as the Airport Infrastructure Grants (AIG) program; programs
22 administered by the FRA, such as the Railroad Crossing Elimination (RCE) Grant Program; and
23 programs administered directly by DOT, such as the Strengthening Mobility and Revolutionizing
24 Transportation (SMART) discretionary grant program. Moreover, DOT and the DOT OAs have
25 made clear that these conditions will now appear in all DOT grants going forward.
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1 15. DOT and the remaining DOT OAs have provided grant agreements governing grant
2 programs that contain substantially the same three conditions as in the FTA Master Agreement
3 (collectively and together with the FTA Grant Conditions, the “DOT Grant Conditions”):

- 4 a. First, the DOT Defendants have imposed a discrimination condition (“DOT
5 Discrimination Condition”) that requires grant recipients, “[p]ursuant to
6 Section (3)(b)(iv), Executive Order 14173” to agree that “its compliance in all
7 respects with all applicable Federal antidiscrimination laws is material to the
8 government’s payment decisions for purposes of [the False Claims Act],” and
9 that “it does not operate any programs promoting [DEI] initiatives that violate
10 any applicable Federal anti-discrimination laws.”
- 11 b. Second, the DOT Defendants have imposed an immigration enforcement
12 condition (“DOT Immigration Enforcement Condition”) that requires recipients
13 to “cooperate with Federal officials in the enforcement of Federal law,
14 including cooperating with and not impeding U.S. Immigration and Customs
15 Enforcement (ICE) and other Federal offices and components of the
16 Department of Homeland Security in the enforcement of Federal immigration
17 law.”
- 18 c. Third, the DOT Defendants have imposed a condition (“DOT EO Condition”)
19 that requires recipients to “comply with all applicable Federal laws, regulations,
20 executive orders, policies, guidelines, and requirements as they relate to the
21 application, acceptance, and use of Federal funds for this [grant]” and lists,
22 among other things, Executive Orders 14168 (“Defending Women from Gender
23 Ideology Extremism and Restoring Biological Truth to the Federal
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1 Government”) and 14173 (“Ending Illegal Discrimination and Restoring Merit-
2 Based Opportunity”), as well as two criminal immigration statutes (8 U.S.C. §
3 1324 and 8 U.S.C. § 1327) as “provisions” that are “applicable” to grant
4 agreements.

5
6 16. The DOT Plaintiffs now face deadlines with respect to various DOT grants subject
7 to the DOT Grant Conditions. For example, Columbus faces an apparent deadline of May 27 to
8 sign a FHWA SS4A grant agreement; King County faces an apparent May 31, 2025 deadline to
9 submit invoices for reimbursement of already-incurred expenses under a FAA AIP grant; Tucson
10 faces a May 31, 2025 deadline to submit funding authorization requests for FHWA formula grants;
11 and the Port of Seattle faces apparent deadlines as early as June 3 to sign grant agreements for
12 FAA Airport Terminal Program Grants. Intercity Transit was given only two days to sign a DOT
13 SMART grant agreement—a deadline that passed on May 15, forcing Intercity Transit into the
14 position of needing to immediately sign to obtain clarity on whether these funds will remain
15 available or whether its projected projects and funding require adjustment.

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17 17. Any delay or loss of DOT funding would force the DOT Plaintiffs to substantially
18 curtail existing and planned transportation safety and other improvement operations, including
19 enhancing pedestrian safety, conducting airport resiliency and modernization improvements,
20 maintaining and replacing a range of transit vehicles, and implementing advanced transportation
21 technology. In some cases, the DOT Plaintiffs need to draw down grant awards immediately or
22 else divert resources from other projects or services and face significant project delays. The loss
23 of DOT funding would require the DOT Plaintiffs to fundamentally rework their longstanding
24 financial plans and procedures, capital project delivery processes, and service delivery models in
25 ways that could have significant impacts on their missions, employees, and constituents. Given the
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1 significance of the impacts, the uncertainty surrounding continued DOT funding is already causing
2 the DOT Plaintiffs harm.

3 II. CONCLUSIONS OF LAW

4 1. The Court has jurisdiction over Defendants and the subject matter of this action.
5 Plaintiffs' claims are not subject to the Tucker Act because the sources of their asserted rights are
6 the U.S. Constitution and statutes, including the Separation of Powers doctrine, the Spending
7 Clause, the Tenth Amendment, and the Administrative Procedure Act (APA). Moreover, the type
8 of relief Plaintiffs seek is declaratory and injunctive, precisely the kind of relief that is generally
9 not available in the Court of Federal Claims. *See Doe v. Tenet*, 329 F.3d 1135, 1141 (9th Cir.
10 2003).

12 2. The Court deems no security bond is required under Rule 65(c).

13 3. Plaintiffs have standing to bring this suit. "A loss of funds promised under federal
14 law satisfies Article III's standing requirement." *City & Cnty. of S.F. v. Trump* ("San Francisco"),
15 897 F.3d 1225, 1235 (9th Cir. 2018); *see also Dep't of Commerce v. New York*, 588 U.S. 752, 767
16 (2019). Here, Plaintiffs have been awarded or conditionally awarded federal grant funds that they
17 could lose unless they accept unlawful conditions that would dictate how they govern on matters
18 of public concern. This imminent loss of funds or infringement of rights is traceable to the
19 conditions at issue and redressable by an order barring their enforcement. *See Clapper v. Amnesty*
20 *Int'l USA*, 568 U.S. 398, 409 (2013) (cleaned up).

21 4. To obtain a TRO, the moving Plaintiffs must establish (1) they are likely to succeed
22 on the merits; (2) irreparable harm is likely in the absence of preliminary relief; (3) the balance of
23 equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def.*
24 *Council, Inc.*, 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1).
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5. There is a strong likelihood that the HUD Plaintiffs will succeed on the merits of their claims that the CoC Grant Conditions violate (1) the Constitution's separation of powers doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *S. Dakota v. Dole*, 483 U.S. 203, 207–08 (1987); (3) the Tenth Amendment, *Nat'l Fed'n of Indep. Bus. v. Sebelius* ("NFIB"), 567 U.S. 519, 577–78 (2012); and (4) the APA, 5 U.S.C. § 706(2).

6. There is a strong likelihood that the DOT Plaintiffs will succeed on the merits of their claims that the DOT Grant Conditions violate (1) the Constitution's separation of powers doctrine, *San Francisco*, 897 F.3d at 1234; (2) the Spending Clause, *Dole*, 483 U.S. at 207–08; (3) the Tenth Amendment, *NFIB*, 567 U.S. at 577–78; and (4) the APA, 5 U.S.C. § 706(2).

7. The HUD Plaintiffs and the DOT Plaintiffs have also shown that they are likely to suffer irreparable harm during the pendency of litigation in the absence of a TRO.

8. The balance of equities tips toward the HUD Plaintiffs and the DOT Plaintiffs and the public interest strongly weighs in favor of entering a TRO.

III. ORDER

It is now, therefore, ORDERED as follows:

1. Plaintiffs' Second Motion for Temporary Restraining Order is GRANTED;

2. HUD and its officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively "Enjoined HUD Parties"), are enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in the Motion, or any materially similar terms or conditions with respect to any CoC funds awarded to HUD Plaintiffs or members of their Continuums; (2) as to HUD Plaintiffs, rescinding, withholding, or cancelling any CoC Grant Agreements, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning CoC funds, based on such terms or conditions;

1 or (3) requiring HUD Plaintiffs to make any “certification” or other representation related to
2 compliance with such terms or conditions;

3 3. The Enjoined HUD Parties shall immediately treat any actions taken to implement
4 or enforce the CoC Grant Conditions or any materially similar terms or conditions as to HUD
5 Plaintiffs, including any delays or withholding of funds based on such conditions, as null, void,
6 and rescinded, and may not retroactively apply such conditions to grant agreements executed
7 during the effective period of this TRO. The Enjoined HUD Parties shall immediately take every
8 step necessary to effectuate this order, including clearing any administrative, operational, or
9 technical hurdles to implementation;
10

11 4. DOT, the DOT OAs, and their officers, agents, servants, employees, and attorneys,
12 and any other persons who are in active concert or participation with them (collectively “Enjoined
13 DOT Parties”), are enjoined from (1) imposing or enforcing the DOT Grant Conditions, as defined
14 in the Motion, or any materially similar terms or conditions to any DOT funds awarded, directly
15 or indirectly, to the DOT Plaintiffs or their subrecipients; (2) as to the DOT Plaintiffs or their
16 subrecipients, rescinding, withholding, or cancelling DOT grant awards, or pausing, freezing,
17 impeding, blocking, canceling, terminating, delaying, withholding, or conditioning DOT funds,
18 based on such terms or conditions; or (3) requiring the DOT Plaintiffs or their subrecipients to
19 make any “certification” or other representation related to compliance with such terms or
20 conditions;
21

22 5. The Enjoined DOT Parties shall immediately treat any actions taken to implement
23 or enforce the DOT Grant Conditions or any materially similar terms or conditions as to DOT
24 funds awarded, directly or indirectly, to the DOT Plaintiffs or their subrecipients, including any
25 delays or withholding of funds based on such conditions, as null, void, and rescinded, and may not
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1 retroactively apply such conditions to grant agreements executed during the effective period of
2 this TRO. The Enjoined DOT Parties shall immediately take every step necessary to effectuate this
3 order, including clearing any administrative, operational, or technical hurdles to implementation;

4 6. Defendants' counsel shall provide written notice of this Order to all Defendants and
5 agencies and their employees by the end of the day on Thursday, June 29, 2025;
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7 7. By the end of the day on Thursday, June 29, 2025, the Defendants SHALL FILE
8 on the Court's electronic docket and serve upon Plaintiffs a Status Report documenting the actions
9 that they have taken to comply with this Order, including a copy of the notice and an explanation
10 as to whom the notice was sent;

11 8. This order remains in effect pending further orders from this Court.
12

13 Dated this ____ day of _____, 2025.
14
15

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HONORABLE BARBARA J. ROTHSTEIN

17 Presented by:

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ORDER GRANTING PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER - 14

No. 2:25-cv-00814-BJR

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ORDER GRANTING PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER - 15
No. 2:25-cv-00814-BJR

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